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RECENT DECISIONS

ADJOINING LANDOWNERS—BLASTING—DAMAGE BY CONCUSSION.—Defendant, while grading a railroad right of way, exploded a blast of gunpowder which, by concussion of the earth, destroyed plaintiff's well. *Held*, defendant is liable for damage by concussion, irrespective of negligence *Patrick v. Smith* (Wash.), 134 Pac. 1076. See NOTES, p. 233.

ALIMONY—CONTRACTS MADE PENDENTE LITE.—A wife who was suing for divorce agreed to waive her right to alimony in consideration of her husband's promise to pay her a certain sum in lieu thereof. *Held*, this contract, good where executed, is not so contrary to the public policy of Connecticut that the courts of that state will refuse to enforce it. *Maisch v. Maisch* (Conn.), 87 Atl. 729.

The authorities are about evenly divided upon the question of the validity of contracts in lieu of alimony made while a suit for divorce is pending. Such contracts have been upheld in *Newman v. McComb*, 112 Va. 408, 71 S. E. 624; *Martin v. Martin*, 65 Iowa 225, 21 N. W. 595; *Burnett v. Paine*, 62 Me. 122; *Palmer v. Fagerlin*, 163 Mich. 345, 128 N. W. 207; *Gibbons v. Gibbons*, 21 Ky. Law Rep. 1214, 54 S. W. 710; *Werner v. Werner*, 153 App. Div. 719, 138 N. Y. Supp. 633 (distinguishing *Lake v. Lake*, *infra*); *Irvin v. Irvin*, 169 Pa. St. 529, 32 Atl. 445, 29 L. R. A. 292. They have been held invalid in *Seeley's Appeal*, 56 Conn. 202, 14 Atl. 291; *Hamilton v. Hamilton*, 89 Ill. 349 (divided court); *Chapin v. Chapin*, 135 Mass. 393 (*dictum*); *Adams v. Adams*, 25 Minn. 72; *Speck v. Dausman*, 7 Mo. App. 165; *Lake v. Lake*, 136 App. Div. 47, 119 N. Y. Supp. 686.

It seems that the modern tendency is toward upholding contracts of this character; but, of course, if an express agreement not to defend the suit is part of the consideration the contract is void as collusive.

Where a contract in lieu of alimony provided for a full dissolution of the marriage relation so far as the law permits, the contract was held void, regardless of whether or not it was valid where made. *Palmer v. Palmer*, 26 Utah 1, 72 Pac. 3, 61 L. R. A. 641, 99 Am. St. Rep. 820.

A wife agreed to discontinue a pending divorce suit and again cohabit with her husband, provided, if he repeated his acts of cruelty and compelled her to leave him, she should be paid a certain amount in lieu of alimony. The contract was upheld in *Woodruff v. Woodruff*, 28 Ky. Law Rep. 757, 1082, 90 S. W. 266, 91 S. W. 265. The contrary was held on similar facts in *Periera v. Periera* (Cal.), 103 Pac. 488.

Where a husband was ordered to make weekly payments of alimony *pendente lite*, and the wife released him from the obligation in consideration of the payment of a lump sum and a smaller weekly amount for the support of her child, the agreement was upheld. *Ward v. Goodrich*, 34 Colo. 369, 82 Pac. 701, 114 Am. St. Rep. 167.

An agreement in lieu of alimony made after the entering of an inter-

locutory decree and not conditioned upon the granting of a final decree, is valid. *Schmieding v. Doellner*, 10 Mo. App. 373.

Contracts in lieu of alimony may be accepted by the court which tries the suit and made part of the decree of divorce. *Buck v. Buck*, 60 Ill. 241; *Stratton v. Stratton*, 77 Me. 373, 52 Am. Rep. 779; *Owen v. Yale*, 75 Mich. 253, 42 N. W. 817; *Daggett v. Daggett*, 5 Paige (N. Y.) 509, 28 Am. Dec. 442; *Hammerstein v. Trust Co.*, 156 App. Div. 644, 141 N. Y. Supp. 1065. And such a decree cannot be modified without the consent of the parties. *Pryor v. Pryor*, 88 Ark. 302, 114 S. W. 700, 129 Am. St. Rep. 102; *Julier v. Julier*, 62 Ohio St. 90, 56 N. E. 661, 78 Am. St. Rep. 697; *Henderson v. Henderson*, 37 Ore. 141, 60 Pac. 597, 61 Pac. 136, 82 Am. St. Rep. 741. *Contra, Warren v. Warren*, 116 Minn. 458, 133 N. W. 1009.

BANKRUPTCY—JURISDICTION OF COURT—ADVERSE CLAIMS.—The petition of a trustee for a summary order requiring the wife of the bankrupt to turn over property, alleged to belong to the bankrupt, set forth that it was in the joint possession of the husband and wife. It was conceded that all of the property was purchased by the wife with the proceeds of land acquired by the bankrupt under the homestead laws of the United States and conveyed to her when not subject to any liens. *Held*, the wife has a substantial adverse claim, which can not be determined without her consent, except in a plenary suit. *Shea v. Lewis* (C. C. A.), 206 Fed. 877.

Where by statute the wife is permitted to hold property in her own right adversely to her husband, she may be an adverse claimant as to property so held in bankruptcy proceedings against her husband. *Blumberg v. Bryan* (C. C. A.), 6 Am. B. R. 20, 107 Fed. 673; *In re Green*, 6 Am. B. R. 270, 108 Fed. 616. Of course when her possession is merely colorable, the husband using her as a means to defraud his creditors, she is not an adverse claimant. *In re Eddleman*, 19 Am. B. R. 45, 154 Fed. 160; *In re Friedman*, 20 Am. B. R. 37, 161 Fed. 260.

While under the original Bankruptcy Act of 1898 no jurisdiction, and *a fortiori* no summary jurisdiction, existed in the bankruptcy courts over adverse claimants, the amendment of 1903, § 23b, gave them jurisdiction over suits brought by the trustee under §§ 60b, 67e, 70e, and by consent, which must be exercised, however, by plenary action. *Bardes v. Bank*, 4 Am. B. R. 163, 178 U. S. 524; *Jacquith v. Rowley*, 9 Am. B. R. 525, 188 U. S. 690. A claim may be adverse, even though in fact fraudulent and voidable. *Johnston v. Spencer*, 27 Am. B. R. 800, 195 Fed. 215, 115 C. C. A. 167. An alleged fraudulent or preferential transferee in possession is an adverse claimant, although the claimant be the wife or daughter of the bankrupt, and as such entitled to have his or her rights adjudicated by plenary suit. *In re Grahs*, 1 Am. B. R. 465; *In re Cohn*, 3 Am. B. R. 421, 98 Fed. 75; *Wall v. Cox*, 5 Am. B. R. 727, 181 U. S. 244; *In re Adams*, 12 Am. B. R. 367, 130 Fed. 788. If the property is in the possession of the claimant, his claim is adverse whether he claims to hold an absolute title to such property or only asserts a lien upon it. *First Nat. Bank v. Title and Trust Co.*, 14 Am. B. R. 102, 198 U. S. 280; *In re Horgan* (C. C. A.), 21 Am. B. R. 31, 164 Fed. 415. A prerequisite to the exercise